



In the Matter of:

WILLIAM LATHAN

ARB CASE NO. 00-054

and

DATE: June 26, 2000

**Dispute concerning the payment of
prevailing wage rates on federally
funded public works projects
known as Alaska Village Safe
Water projects.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

William Lathan, *Pro se*, Anchorage, Alaska

**ORDER DISMISSING THE PETITION
FOR REVIEW WITHOUT PREJUDICE**

On April 28, 2000, the Administrative Review Board received a petition filed by William Lathan (Petitioner) seeking a review of the prevailing wages paid to workers employed at Alaska Village Safe Water projects. The Petitioner sought the review pursuant to the Davis-Bacon Act (40 U.S.C. §276a *et seq.*).

The Board requested the Petitioner to provide a copy of the final determination of the Administrator of the Wage and Hour Division (Administrator) being appealed. The Petitioner supplied some additional documents on May 12, 2000, but his submission did not include a copy of a final order of the Administrator.

On May 22, 2000, the Board ordered the Petitioner to show cause why his petition should not be dismissed on the ground that he has failed to comply with 29 C.F.R. §1.9 (1999). This regulation provides that before a petitioner may obtain review of the wage determination by the Board, the petitioner must first request the Administrator to reconsider the wage determination and the Administrator must, in turn, act upon the request.

On June 16, 2000, the Board received a "Motion for Continuance" filed by the Petitioner. The Motion states, "The petitioner requests a continuance on the above matter because of his

confusion as to the proper Administrator to address in this matter. A continuance allowing the petitioner one week response from the Administrator will be sufficient. Or at the latest July 7, 2000.”

Although the import of the Petitioner’s statement is not absolutely clear, the Petitioner’s “confusion as to the proper Administrator to address in this matter” strongly suggests that at the time the Petitioner filed his petition for review with the Board, he had not yet received a decision on reconsideration and review by the Administrator of the Wage and Hour Division as provided in 29 C.F.R. §1.8 (1999).^{1/} Absent such a decision, the Petitioner prematurely filed his petition and the Board has no jurisdiction to consider the petition. *See* 29 C.F.R. §1.9 (1999). A petitioner may not properly petition the Board to review a decision of the Administrator which the Administrator has not yet issued.

Accordingly, the Board **DISMISSES** the petition for review without prejudice. If the Petitioner has received or subsequently receives the required Administrator’s decision upon review and reconsideration, the Petitioner may file a new petition for review of that decision with the Board pursuant to 29 C.F.R. §1.9.

SO ORDERED.

PAUL GREENBERG
Chair

E. COOPER BROWN
Member

CYNTHIA L. ATTWOOD
Member

^{1/} Requests for review and reconsideration as provided in 29 C.F.R. 1.8 may be addressed to:

T. Michael Kerr, Administrator
Wage and Hour Division
Employment Standards Administration
United States Department of Labor
200 Constitution Ave, N.W.
Suite S-3502
Washington, D.C. 20210